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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,708	01/30/2001	Thomas H. North	483471-003	7669

7590 06/06/2002

Mark P. Levy
Thompson Hine & Flory LLP
2000 Courthouse Plaza NE
P.O. Box 8801
Dayton, OH 45401-8801

EXAMINER

ELVE, MARIA ALEXANDRA

ART UNIT	PAPER NUMBER
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1725

DATE MAILED: 06/06/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

MF-7

Office Action Summary

Application No.
09/772,708

Applicant(s)
North et al.

Examiner
M. Alexandra Elve

Art Unit
1725



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/22/02
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above, claim(s) 12-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 6) ☐ Other:

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DETAILED ACTION

Election/Restriction

1. Applicant's election without traverse of group I (clms 1-11) in Paper No. 6 is acknowledged.
2. Claims 12-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected groups, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 6.

Claim Rejections - 35 USC § 112

3. Claims 10-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 10-11 are indefinite because the recitation of a composition without the ranges has been held merely functional because it does not definite the composition specifically. The elements are in weight percent but it is not clear if the percentage is with respect to the fill or the wire. See Koebel v. Coe, 505 OG 513; In re Fullam, Green, and Engle 73 USPQ 399.

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Claim Rejections - 35 USC § 102/103

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-5 & 7-8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kulikowski et al. (US Pat. 5,369,244).

Kulikowski et al. discloses a flux cored arc welding electrode wherein the electrode has an outer ferrous sheath and a particulate fill material. The fill material includes titanium, manganese, iron, titanium dioxide, and polytetrafluoroethylene (abstract & col. 2, lines 20-26). The primary constituent of the alloying system is manganese and iron makes up the remainder of the fill (col. 2, lines 60-68 & col. 3, lines 1-3). The polytetrafluoroethylene produces low oxygen and hydrogen content in the weld bead. Welding is associated with a low fume generation (col. 3, lines 28-41). Additionally, the electrode contains silicon, carbon,

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Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 6 & 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kulikowski et al. as stated in paragraph 6 above.

Kulikowski et al. does not disclose the exact composition. The exact amounts of each of the constituents as presently claimed are not disclosed in the prior art; however, the prior art compositions closely approximate or overlap applicant's claimed composition. It has been held that one of ordinary skill in the art at the time of the invention would have considered the claimed compositions to have been obvious because close approximation or overlapping ranges in a composition is considered to establish a prima facie case of obviousness. See In re Malagari, 182 USPQ 549, Titanium Metals v. Banner 227 USPQ 773, In re Nehrenberg 126 USPQ 383.

Conclusion


9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See US PTO-892.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Alexandra Elve whose telephone number is (703) 308-0092. The examiner can normally be reached Monday to Friday from 6:30 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn, can be reached on (703) 308-3318.

Any inquiry of general nature to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 308-0661.



M. ALEXANDRA ELVE
PRIMARY EXAMINER

June 3, 2002.